

40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016
Merrillville, Indiana

Indiana Child Support Conference

Paternity Disestablishment

Objectives

- ▶ Review ways paternity is legally recognized,
- ▶ Explore challenges to final determinations of paternity,
- ▶ Address ways IV-D can limit the risk of a paternity challenge, and how to respond when a challenge is raised.

ESTABLISHING PATERNITY

- Presumption
- Paternity Affidavit
- Judicially Established

Establishing Paternity

Presumption of Paternity

- IC 31-14-7
 - Marriage
 - Void or voidable marriage
 - Genetic test

Establishing Paternity

Paternity Affidavit

- ▶ IC 31-14-73 & IC 16-37-2-2.1
 - ▶ In Hospital
 - ▶ Health Department

Establishing Paternity

Judicially Established

- ▶ Petition filed in Court
- ▶ Court Order

PATERNITY

DISESTABLISHMENT

Paternity Disestablishment

Public Policies

- ▶ Establishing paternity of a child born out of wedlock.
- ▶ Identifying the correct biological father and allocating the child support obligation to that person.
- ▶ Avoiding Filius Nullius and establishing paternity with finality.

Paternity Disestablishment

Presumption of Paternity is Rebuttable

- ▶ Dissolution and timeliness.
- ▶ Born out of wedlock challenge despite intact marriage.
- ▶ Prima facie case for relief → Direct, clear and convincing evidence independent of court action.

Paternity Disestablishment

- ▶ While the mother was married she had a sexual relationship with her neighbor. After the child's birth, the neighbor petitioned the trial court to establish his paternity.
- ▶ The child was not named as a party or represented by a GAL. The trial court approved an agreed entry stating that the neighbor was the child's biological father.
- ▶ Movant mother sought to set aside the agreed entry stating her neighbor was her child's father pursuant to T.R. 60(B)(6) motion.
- ▶ The Court held although the child was born while the mother was married, the child was born out of wedlock because the mother was not married to the neighbor. Thus, the neighbor could file a paternity action.
- ▶ Although the child was not named the agreed entry was merely voidable, not void.
- ▶ According to Indiana common law a child born to a married woman, but fathered by a man other than her husband, is a child born out of wedlock for purposes of the statute.
- ▶ *K.S. v. R.S.*, 669 N.E.2d 399 (Ind. 1996)

Paternity Disestablishment

- ▶ Order established after dissolution for a child that was presumed to be issue of the marriage.
- ▶ Putative father paid child support for 11 years.
- ▶ Child developed sickle cell anemia, but neither parent carried the trait.
- ▶ Putative father realized he could not be the biological father of the child and sought relief from paying child support by filing a T.R.60 (B)(8) motion.
- ▶ The Court held direct, clear, and convincing evidence was present that putative father was not biological father, and had the medical evidence been available at the time of dissolution, the trial court would not have been in a position to enter a support order.
- ▶ The Court stressed the prima facie case for relief became available **independently of court action**, the Court remanded with instruction to grant father's requested relief.
- ▶ Finally the Court stated, "We do not intend to create a new tactical nuclear weapon for divorce combatants. One who comes into court to challenge a support order on the basis of non-paternity without externally obtained clear medical proof should be rejected as outside the equitable discretion of the trial court."
- ▶ Fairrow v. Fairrow, 559 N.E.2d 597, 600 (Ind. 1990)

Paternity Disestablishment

Paternity Affidavit

- ▶ Within 60 Days
 - ▶ Father who signed - Can Request DNA
 - ▶ File request in Paternity Court

Paternity Disestablishment

Paternity Affidavit

- ▶ After 60 Days
 - ▶ Court must find fraud, duress or mistake of fact, then
 - ▶ Man who signed requests DNA
 - ▶ Test excludes man as biological father

Paternity Disestablishment

- ▶ Court cannot order rescission of the Paternity Affidavit unless the Court first makes a finding of fraud, duress or material mistake of fact existed in the execution.
- ▶ The Court must then order a genetic test once the above findings are made and can only order rescission if the test indicates that the man is excluded.
- ▶ The Court cannot order rescission of the Paternity Affidavit without both prongs being satisfied.
- ▶ J.M. v. M.A., 950 N.E.2d 1191 (Supreme Court 2011)

▶ William F. Welch, IPAC

Paternity Disestablishment

- ▶ Mother gave birth to child out of wedlock. Boyfriend signed paternity affidavit at the hospital, allegedly without a verbal explanation of the form's legal consequences.
- ▶ He was subsequently ordered to pay child support.
- ▶ He underwent genetic testing . The results excluded him as the child's father.
- ▶ He filed a Motion to Set Aside the Paternity Affidavit and for DNA Paternity Testing.
- ▶ He testified that the mother "clearly told me that I was the only one." Mother offered no testimony either confirming or refuting his testimony.
- ▶ The trial court denied his motion. He appealed.
- ▶ The Court stated that public policy in favor of establishing the paternity of a child born out of wedlock co-exists with a "substantial public policy in correctly identifying parents and their offspring." *In re S.R.I.*, 602 N.E.2d 1014, 1016 (Ind. 1992). Boyfriend was the victim of mother's intentional deception or misapprehension of the critical fact of paternity.
- ▶ The Court held the first prong of IC 16-37-2-2.1(i) was satisfied and remanded with instructions to the trial court to order a genetic test in accordance with I.C. 16-37-2-2.1(i)(2).
- ▶ In a foot note the Court advised that a lack of awareness of legal ramifications of signing a paternity affidavit is not a valid statutory reason for setting aside paternity affidavit.
- ▶ In Re the Paternity of M.M. v. Liana M., 889 N.E.2d, 846, 848-849, (Ind. Ct. App. 2008)

IV-D Response to Attack on Paternity Affidavit

- ▶ Do Not agree to rescind Paternity Affidavit
- ▶ Petition must allege Fraud, Duress, or Material Mistake of Fact
 - ▶ If so, then set for hearing and require proof of case
 - ▶ If not, move to dismiss as inadequate petition
- ▶ If Court finds Fraud, Duress or Material Mistake of Fact then (and only then) may Court order DNA test
- ▶ If NCP not the biological father, then Paternity Affidavit may be rescinded.

▶ William F. Welch, IPAC

IV-D Response to Attack of Paternity Affidavit

- ▶ I.C. 16-37-2-2.1(i)
 - ▶ A woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor.

Paternity Disestablishment

Limiting the risks of a challenge

- ▶ Genetic Tests
- ▶ Default Judgments

Paternity Disestablishment

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